

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

WILLIAM D. BURGAN and
LYNETTE BURGAN,

Plaintiffs,

vs.

ALEXANDER NIXON, THOMAS
RIEGER, and CARBON COUNTY,

Defendants.

CV 16-61-BLG-TJC

ORDER

Before the Court is defendants Alexander Nixon's, Thomas Rieger's, and Carbon County's (collectively, "Defendants") Joint Motion to Dismiss the Amended Complaint for Failure to State a Claim upon which Relief May Be Granted (the "Motion"). (Doc. 33.)

On January 30, 2018, the Court granted plaintiffs William D. Burgan's and Lynette Burgan's (collectively, "Plaintiffs") Unopposed Motion for Leave to File Amended Complaint. (*See* Docs. 54, 55.) Plaintiffs filed their Second Amended Complaint (Doc. 56) later that same day. Plaintiffs' Second Amended Complaint supersedes the first Amended Complaint (Doc. 23), "the latter being treated [h]ereafter as non-existent." *Rhodes v. Robinson*, 621 F.3d 1002, 1005 (9th Cir. 2010). Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion is **DENIED as moot** due to the filing of Plaintiffs' Second Amended Complaint. This order shall be without prejudice as to any defenses or arguments Defendants may raise in any responsive pleading to the Second Amended Complaint.

DATED this 31st day of January, 2018.



TIMOTHY J. CAVAN
United States Magistrate Judge